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.1 Background

These regulations cover the retroactive payment and underpayment relief under an amended judgment in Welfare Rights Organization v. McMahon (WRO). Below is an overview of the case.

- .11 The case: The suit claimed that CDSS did not promptly implement 1983 legislation authorizing spouse providers to be paid for protective supervision and travel to health related appointments, termed medical accompaniment. From July 1, 1981 to June 30, 1983, IHSS statutes prohibited paying spouse providers for these services. The legislation (Stats. 1983, Ch. 232, section 116.7) required these services be paid from July 1, 1983 on.
- .12 Original judgment: The Superior Court (San Diego Co.) entered judgment in this case on November 23, 1988. Its implementation was delayed because of problems in implementing the original judgment in Miller I. No implementing regulations were issued for the original judgment.
- .13 Amended judgment: The Superior Court approved an amended judgment in this case on July 19, 1991. The modifications were based on the amended judgment in Miller II, approved by the court on July 19, 1991. The judgments contain consistent provisions insofar as practical. SDSS plans to implement the WRO and Miller II cases concurrently.
- .14 The class covered: The amended judgment applies to spouse providers as defined in Section 50-061.411 and spouse applicants/recipients as defined in Section 50-061.412.
- .15 Retroactive payments: Claimants may be eligible for retroactive payments from July 1, 1983 through September 30, 1984, plus prejudgment interest.
- .16 Underpayments: Claimants may be eligible for underpayments from October 1, 1984 through September 30, 1985. There is no prejudgment interest for underpayments.
- .17 Statutory maximums: Retroactive payments and underpayments are limited to the severely impaired (SI) or nonseverely impaired (NSI) maximum levels in effect at the time. In addition, such payments must also be reduced by any IHSS amounts authorized to the claimed recipient for any month in which WRO retroactive payments and/or underpayments are claimed.

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The following provisions describe the procedures by which potential class members will be notified, claims for retroactive payments and underpayments will be processed, and payments due will be determined and paid.

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.2 Notification of Potential Claimants

.21 In order to notify potential claimants, the Department shall:

- .211 Send an Explanatory Flyer in English and Spanish, and a Provider Standard Claim Form in English, with instructions of how to obtain the Spanish version, to all past and present IHSS spouse providers contained on the IHSS Payroll System, from July 1, 1983 through November 30, 1988, who at any time during this period lived at the same address as the recipient. The Department will utilize the services of the Franchise Tax Board and Department of General Services to determine and mail to the most current mailing address available for providers identified in this manner.**
- .212 Provide each CWD with sufficient quantities of Standard Claim Forms, Supplemental Claim Forms, Explanatory Flyers, and 17" x 22" posters modeled after the Explanatory Flyers. Each of the above documents and posters will be in both English and Spanish.**
 - (a) For WRO, there shall be a Provider Standard Claim Form, and a Provider Supplemental Claim Form.**
 - (b) Provider claimants and recipient claimants shall use the same version of these forms.**
- .213 Provide those interested organizations and groups listed in Appendix A-1 through A-9 of the final judgment referred to in Section 50-061.11 with copies of the Standard Claim Forms, Explanatory Flyers, and the posters, with a request to display the posters in a prominent location and distribute the Explanatory Flyers and Standard Claim Forms on request throughout the claim period.**
- .214 Provide the Federal Social Security Administration offices in California with copies of the posters, in English and Spanish, and request that agency to display the posters throughout the claim period in prominent locations where there is public access.**

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- .22 The claim period identified in this section shall be the eight-month period from February 1, 1993 through September 30, 1993.
- .23 In order to notify potential claimants, the CWDs shall:
 - .231 Place the posters described above in a prominent location in each local office having contact with the public throughout the claim period.
 - .232 Provide the Explanatory Flyer and Standard Claim Form to any person inquiring about eligibility for retroactive payments and/or underpayments for WRO v. McMahon.
- .3 Application for Retroactive Payments and Underpayments
 - .31 Claimant Responsibilities
 - .311 The claimant shall cooperate in obtaining all information necessary to process the claim. Failure to provide the needed information shall result in the denial of the claim or of that portion of the claim for which the information is necessary.
 - .312 All claims for retroactive payments and underpayments shall be filed on a Standard Claim Form with the county welfare department in which the claimant currently resides.
 - .313 The claimant shall complete the claim form, sign the form under penalty of perjury, obtain the signature of a witness under penalty of perjury and mail or deliver the completed claim form to the CWD where she/he lives.
 - .314 The claim form shall be completed as stipulated in Sections 50-061.431 and .443, and hand-delivered by close of business or mailed and postmarked to the CWD by September 30, 1993. Claims hand-delivered or mailed and postmarked after this date shall be denied.
 - .315 If the claimant is sent a Notice of Action requesting the completion of either the Standard Claim Form or the Supplemental Claim Form, the claimant shall have forty-five (45) days from the date of the Notice of Action to complete and hand-deliver or mail the document to the CWD. Whenever the claimant must return a document or documents to the CWD within forty-five (45) days, the following shall apply:

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- (a) If mailed, the document(s) shall be postmarked by the last day of the forty-five (45) day period.
- (b) If hand-delivered, the document(s) shall be delivered to the CWD no later than the close of business on the last day of the forty-five (45) day period.
- (c) If required document(s) are not hand-delivered/mailed and postmarked within the time limits stated in this section, denial of the claim, or that portion of the claim for which the information is needed, shall result.

.316 Unless otherwise specified, all references to "days" in regard to time limits shall be construed to mean "calendar" days.

.32 CWD Responsibilities - Filing Date/Time Limits

- (a) The CWD shall date stamp the claim form when received. The CWD shall retain all claim forms and envelopes of any claims received for the WRO v. McMahon lawsuit.
- (b) The date of filing shall be the date postmarked on the envelope.
- (c) If the claim is filed in person at the CWD, the date of filing shall be the date received in the CWD office, e.g., the date stamped on the claim.
- (d) If the filing date cannot be determined pursuant to Section 50-061.32(b) and (c), the filing date shall be the date the claim was signed.
- (e) If the claim must be forwarded to another county for processing because the services were either provided or received in the second county, the first county's filing date shall apply.
- (f) If the date of filing on the Standard Claim Form is after September 30, 1993, the claim shall be denied.
- (g) If a Supplemental Claim Form, as described in Section 50-061.441, must be sent to the claimant, the filing date shall not change. The filing date shall remain the same as that which was determined in accordance with Sections 50-061.32, (b), (c) or (d).
- (h) If the CWD receiving the claim determines that services were received or provided while the recipient/applicant lived in another county, for all or part of the claim period, the CWD shall:

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- (1) Send a copy of the claim to each affected county. The CWD shall also send a Notice of Action to the claimant within 10 calendar days of the filing date explaining that the correct CWD will process the claim for the period of time in which the services were provided/received in the other county.
- (2) As noted in Section 50-061.32 (e) the filing date for the claim will be that determined by the first CWD receiving the claim.
- (i) The CWD shall determine eligibility/ineligibility and compute the retroactive payments and underpayments due within 45 days of the filing date. The CWD shall input this information into the Case Management Information and Payrolling System (CMIPS) so interest can be computed on approved cases and the computation returned to the CWD.
 - (1) The CMIPS shall compute the total retroactive payment and/or underpayment amount due, with and without interest and return the computation on a form developed by SDSS to the appropriate CWD within five working days from the date of CWD input.
 - (j) Within 10 working days of receiving the computation from CMIPS, the CWD shall issue a Notice of Action to the claimant which contains the information specified in Section 50-061.631, and, if applicable, Sections 50-061.634 and .635. Once the CWD has issued the notice to the claimant, the CWD shall then send the necessary documents through the CMIPS so payment may be issued.
 - (k) CWDs receiving claims forwarded from another county shall process the claim, determine eligibility, compute retroactive payments and/or underpayments, compute interest, issue the necessary Notice of Action and forward the necessary documents to the CMIPS within 45 days of receipt from the original county.
 - (l) In situations where completion of the claims process for retroactive payments and/or underpayments is delayed due to circumstances beyond control of the CWD, the reason(s) for the delay(s) shall be documented in the affected claimant's case file.
 - (m) Unless otherwise specified, all references to "days" for these time limits shall be construed as "calendar" days.

.33 Retroactive Payment and Underpayment Time Periods

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.331 Eligibility for retroactive payments under WRO shall be limited to the following periods:

(a) July 1, 1983 through September 30, 1984 for claims in which the housemate was a spouse provider.

.332 Claims in which the period claimed is beyond the retroactive time period specified in Section 50-061.331(a) shall be processed as underpayments for the period October 1, 1984 through September 30, 1985.

.4 Claim Processing

.41 Conditions for Class Membership

.411 IHSS spouse provider claimants may be eligible to receive retroactive payments and/or underpayments in WRO. Spouse provider claimants who are potentially eligible to receive these payments are persons who:

- (a) Were legally married to an individual meeting all applicable conditions stated in Section 50-061.412, and provided protective supervision and/or medical accompaniment services to that individual during the applicable retroactive payment and/or underpayment period specified in Section 50-061.33; or
- (b) Were considered to be a member of a married couple as defined for the purposes of SSI/SSP eligibility in 20 CFR 416.1806, lived with an individual meeting all applicable conditions stated in Section 50-061.412, and provided protective supervision and/or medical accompaniment services during the applicable retroactive payment and/or underpayment period specified in Section 50-061.33; and
- (c) Left full-time employment or was prevented from obtaining full-time employment because no other suitable provider was available, and
- (d) Needed to provide these services to their spouse, or inappropriate placement or inadequate care may have resulted, and
- (e) Were not compensated for providing protective supervision and/or medical accompaniment services for the month(s) claimed.

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.412 IHSS recipient/applicant claimants potentially eligible to receive retroactive payments and/or underpayments are persons who:

- (a) Were California residents, aged, blind, or disabled during the applicable retroactive and/or underpayment period specified in Section 50-061.33 and met the eligibility conditions of MPP 30-755; and,
- (b) Required assistance during transportation to and from appointments with physicians, dentists and other health practitioners, where the recipient's presence was required at the destination, and/or
- (c) Were nonself-directing, confused, mentally impaired, or mentally ill, and may have been hurt or injured if left alone, thus meeting the general conditions or requiring the service of protective supervision; and,
- (d) Received IHSS benefits, but were denied protective supervision services during the applicable retroactive payment and/or underpayment period solely because the provider was a spouse, and the amount of benefits was less than the severely impaired or nonseverely impaired maximum, as applicable at the time; and/or
- (e) Received IHSS benefits, but were denied medical accompaniment services during the applicable retroactive payment and/or underpayment period solely because the provider was a spouse, and the amount of benefits was less than the severely impaired or nonseverely impaired maximum, as applicable at the time; or
- (f) Applied for IHSS services during the applicable retroactive payment and/or underpayment period and were denied protective supervision services solely because the provider was a spouse; and/or
- (g) Applied for IHSS services during the applicable retroactive payment and/or underpayment period and were denied medical accompaniment services solely because the provider was a spouse; and,
- (h) Paid the spouse provider during the applicable retroactive payment and/or underpayment period for the provision of protective supervision and/or medical accompaniment services.

.42 Review of Class Membership Questions

.421 The CWD shall review the responses to the class membership qualifying questions in Part I, Section 2 of the Standard Claim Form.

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- (a) The CWD shall issue a denial Notice of Action explaining that the claimant is not a WRO v. McMahan class member if the claimant did any of the following:
 - (1) The claimant answered "no" to 2A, or 2B, or 2E, or 2F;
 - (2) The claimant answered "no to both 2C and 2D;
 - (3) The claimant answered "no" to both parts of 2G.
- (b) If the claimant answered "yes" to 2A, or 2B, or 2C, or 2D, or 2E, or 2F, or 2G, and the CWD has information available which contradicts the claimant's contention of class membership, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of this information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.
- (c) If the claimant answered "unknown" to either questions in 2G, the CWD shall issue a Notice of Action and a WRO v. McMahan Supplemental Claim Form to the claimant. The claimant shall have 45 days from the date of the Notice of Action to complete the Supplemental Claim Form and return it to the CWD.

.43 Review of Information Contained on the Standard Claim Form

- .431 The CWD shall review each Standard Claim Form submitted to determine if the claimant has provided the information necessary to further process the claim. For the purposes of this determination, a claim shall be considered complete when all the following requirements are met:
- (a) The following information requested in Part I, Section 1 is provided: claimant's name, social security number, and current address.
 - (b) All qualifying questions in Part I, Section 2 are answered.
 - (c) If Part I, Section 3 is applicable, the claimant's address at the time they claim to have provided/received protective supervision and/or medical accompaniment services.
 - (d) The following information requested in Part I, Section 4 is provided: name of person whom it is claimed needed protective supervision and/or medical accompaniment; his/her current or last known address; and his/her relationship to the provider.
 - (e) Part I, Section 5, is completed with date of marriage of claimant and spouse.

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- (f) Part I, Section 6, is signed by the claimant and dated.
 - (g) In Part I, Section 7, the Standard Claim Form is signed, dated, and the verifying witness' relationship to the claimant and the recipient is identified and this person's address is listed.
 - (h) The information requested in Part II and Part III is provided, as applicable.
 - (i) The following information requested in Part IV is provided to support the application only if more than eight hours per month of medical accompaniment hours are claimed: the name of the health professional/health facility visited by the claimed recipient; location of origin and destination; type of transportation used; number of months/years visits took place; number of visits per month/year; and approximate duration of round-trip.
- .432 If the CWD determines that Part I, or Part IV if applicable, of the Standard Claim Form has not been completely filled out in accordance with the criteria in Section 50-061.431, the CWD shall send the claimant a Notice of Action specifying that portion of the form which is in need of completion. The Notice of Action shall also state that the claimant has 45 days from the date of the Notice of Action to submit the completed form to the CWD. If the completed form is not returned to the CWD within the 45 days, the claim shall be denied, and a denial Notice of Action shall be mailed to the claimant.
- .433 Upon receipt of the information requested in Section 50-061.432, the CWD shall review the resubmitted information to determine if the claim is now complete in accordance with the criteria in Section 50-061.431. If complete, the CWD shall continue processing the claim.
- (a) If the claim is still not complete because the claimant did not provide all the requested information, the CWD shall deny the claim.
- .434 Failure on the part of the claimant to respond within the 45-day period shall result in denial of the claim.
- .435 The CWD shall review Parts II, III, and IV of the Standard Claim Form to determine if claimed medical accompaniment hours for any month during the retroactive payment and underpayment claim periods exceed eight hours and if information submitted on Part IV of the form supports the hours claimed. The CWD shall use the medical accompaniment regulations to determine entitlement to medical accompaniment services.

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.436 Medical accompaniment regulations are contained in MPP Section 30-757.15.

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- (a) If the CWD determines that Part IV is incomplete or does not support the claim for more than eight hours of medical accompaniment for any month during the retroactive payment or underpayment claim periods, according to the standards set forth in Section 50-061.435, the CWD shall issue a Notice of Action for Adverse Information specifying that Part IV is in need of completion or requesting that the claimant support the hours claimed. The Notice of Action shall also state that the claimant has 45 days from the date of the Notice of Action to submit the completed section or provide the additional information, if available, to the CWD.
- (b) Failure on the part of the claimant to respond within the 45-day period shall result in denial of the unsupported portion of the claim.
- (c) If the CWD determines that the medical accompaniment hours claimed during the retroactive payment and underpayment period do not exceed eight hours, or if more than eight hours per month are adequately supported by information submitted on Part IV of the Standard Claim Form, the CWD shall continue processing the claim.

.44 Supplemental Claim Form

- .441 The CWD shall issue a Supplemental Claim Form to the claimant whenever the CWD is unable to locate either a previously approved IHSS case record or a record of denial of IHSS eligibility. The purpose of the Supplemental Claim Form shall be to: (1) request information from the claimant regarding the claimed recipient's applying for and being denied IHSS during the retroactive payment period; and (2) determine whether the person claiming to have received protective supervision and/or medical accompaniment services met and would have met the income/resource eligibility requirements for IHSS services during the period claimed. The CWD shall include a Notice of Action with the Supplemental Claim Form stating that completion of the form is necessary in order to further determine eligibility for retroactive payments and underpayments and that the claimant must return the completed form to the CWD within 45 days.

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- (a) If the CWD has no case record of an IHSS application and/or denial for the claimed recipient during the retroactive payment periods being claimed, the Notice of Action accompanying the Supplemental Claim Form shall request the claimant to complete all parts of the Supplemental Claim Form in accordance with the criteria in Section 50-061.443.
 - (b) If the CWD has a case record showing the claimed recipient had applied for and was denied IHSS for the retroactive payment periods being claimed, but the CWD cannot determine from the case record whether the claimed recipient met IHSS income/resource eligibility criteria, the Notice of Action accompanying the Supplemental Claim Form shall request the claimant to complete Parts I, III, IV of the Supplemental Claim Form, relating to income/resource eligibility for IHSS, in accordance with the criteria in Section 50-061.443.
 - (c) If the CWD has lost or destroyed its records or did not maintain adequate records during the claimed period, the CWD shall send the Supplemental Claim Form requesting completion of applicable parts of the form, in accordance with the criteria in Section 50-061.443.
- .442 Upon receipt the CWD shall date stamp the submitted Supplemental Claim Form following the provisions of Section 50-061.32(a).
- .443 The CWD shall review the submitted Supplemental Claim Form to ensure that all required questions are answered, all required information is provided, and that the form is signed and dated by both the claimant and a verifying witness. For the purposes of this determination, the Supplemental Claim Form shall be considered complete when the required sections are completed as specified in Section 50-061.441 and:
- (a) The following information requested in Part I, Section 1 is provided: name and current or last known address of the spouse who claims to have provided protective supervision and/or medical accompaniment services during the months claimed.
 - (b) Part I, Section 2, the name and current or last known address of the spouse who claims to have received protective supervision and/or medical accompaniment services during the months claimed, is completed.
 - (c) If Part II is applicable, Sections 1 and 2 requesting information and documentation related to an IHSS application and/or denial for the person for whom it is claimed received protective supervision and/or medical accompaniment services during the months claimed, is completed.

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- (d) Part III, Sections 1, 2, and 3 relating to the (1) receipt of Supplemental Security Income/State Supplemental Program (SSI/SSP) benefits by spouse named in Part I, Section 2; (2) combined monthly income for claimant and spouse; and (3) the amount of combined average monthly liquid resources in excess of \$2250 for claimant and spouse; during the years for which hours are claimed.
 - (e) Part IV of the Supplemental Claim Form is signed and dated by the claimant.
 - (f) Part IV, Section 2 is signed by a verifying witness, dated, with his/her address and relationship to the claimant completed.
- .444 If the CWD determines that the Supplemental Claim Form is incomplete based on the criteria in Section 50-061.443, the CWD shall send a Notice of Action requesting the missing information and attach to the Notice of Action a copy of the original Supplemental Claim Form submitted. The Notice of Action shall specify the section number of the form which is in need of completion and shall state that the claimant has 45 days from the date of the Notice of Action to submit the completed form or the claim will be denied.
- (a) Upon receipt of the information requested in Section 50-061.444, the CWD shall review the submitted information to determine whether the Supplemental Claim Form is now complete in accordance with Section 50-061.443. If complete, the CWD shall continue with processing the claim. If the Supplemental Claim Form is still not complete, the CWD shall deny the claim.
- .445 If the completed Supplemental Claim Form is not received from the claimant within the 45-day limit, the CWD shall deny the claim in accordance with Section 50-061.314.
- .446 Information submitted by the claimant on the Supplemental Claim Form shall be presumed to be true as long as the form has been signed and dated by both the claimant and a witness, unless the CWD has information available which contradicts information supplied by the claimant. If the CWD has such information available and the CWD determines that information indicates the claimed recipient of protective supervision/medical accompaniment services would not have been eligible for IHSS, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.

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- .45 Existing Case File and Information Requirement
- .451 The CWD shall determine if there is an existing case file with which to match claim information for determining eligibility.
- .452 In accordance with Section 50-061.44, if the CWD cannot locate a case file for the IHSS recipient/applicant for whom it is claimed protective supervision and/or medical accompaniment services were provided without IHSS compensation, or if the CWD cannot determine eligibility from the existing case file for the months claimed, the CWD shall send the Supplemental Claim Form to the claimant.
- .453 All information received and/or obtained in relation to the WRO v. McMahan court case, and all forms generated as a result of the court case, shall be retained by the CWD in a WRO case file for each claimant. These documents shall include, but not be limited to:
- (a) Completed Standard Claim Form and any subsequent resubmittals;
 - (b) Completed Supplemental Claim Form, if applicable, and any subsequent resubmittals and any documents submitted by the claimant in responding to the Supplemental Claim Form;
 - (c) Completed Eligibility Determination Worksheets, including documentation of retroactive payment and prejudgment interest calculations as well as underpayment calculations;
 - (d) A copy of any Notices of Action sent to the claimant;
 - (e) A copy of any correspondence with other CWDs in relation to the claim;
 - (f) All CMIPS documents; and,
 - (g) A copy of all other documents used in the determination of eligibility and computation of payments.
- .454 The CWD shall not require the claimant to provide information other than that requested on the Standard Claim Form and, if needed, the Supplemental Claim Form. However, the claimant shall be offered an opportunity, in the form of a Notice of Action for Adverse Information, to submit additional information that might rebut a possible denial based on CWD records. The CWD shall consider any additional information submitted by the claimant to support his/her claim.

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.46 Presumptive Need For and Provision of Protective Supervision

- .461 If other information available to the CWD, including, but not limited to, previous or current IHSS case files, does not rebut the presumption of need for protective supervision, the person claiming to have needed protective supervision is presumed to have needed protective supervision for the months claimed during the applicable retroactive payment and/or underpayment period if:
- (a) A need for protective supervision was assessed at any time, in which case the need shall be from that time forward; or,
 - (b) The need for protective supervision is attested to by a sworn statement on the Standard Claim Form from the claimant and verified by a sworn statement of a witness. The CWD shall consider any other documentation submitted by the claimant to support the presumption of need for protective supervision.
- .462 The person claiming to have needed protective supervision is presumed to have received protective supervision services for the months claimed during the applicable retroactive payment and underpayment periods if the delivery of such services is attested to by a sworn statement from the claimant and verified by a sworn statement of a witness, contained on the Standard Claim Form, and other information available to the CWD, including, but not limited to, previous or current IHSS case files, does not rebut the presumption of delivery of protective supervision services.
- (a) The CWD shall presume that any protective supervision services provided and claimed were not provided voluntarily.
- .463 If information available to the CWD rebuts the presumption of either the need for or the delivery of protective supervision services during any of the months claimed during the applicable retroactive payment and underpayment period, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.
- .464 If the CWD's IHSS recordkeeping system shows no record of the claimed recipient ever applying for or being denied IHSS for the period being claimed, the CWD shall issue a Notice of Action requesting the claimant to complete an attached Supplemental Claim Form in accordance with Section 50-061.44. The claimant shall have 45 days from the date of the Notice of Action to submit the completed Supplemental Claim Form.

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- (a) If the claimant does not submit the Supplemental Claim Form within the 45-day period, the claim shall be denied.
- (b) If the claimant submits the Supplemental Claim Form, and it is complete based on criteria in Section 50-061.443, the CWD shall continue processing the claim.
- (c) If the submitted Supplemental Claim Form is incomplete based on criteria in Section 50-061.443, the CWD shall follow instructions in Section 50-061.444.
- (d) If the CWD determines that information supplied by the claimant verifies that the claimed recipient did in fact apply for and was denied IHSS during the retroactive payment period being claimed, the CWD shall continue to process the claim to determine eligibility for payments.
- (e) If the CWD determines that the information supplied by the claimant does not verify the claimed recipient applied for and was denied IHSS during the retroactive payment period being claimed, the CWD shall issue a denial Notice of Action stating the specific reason(s) for the denial.

.47 Presumptive Need For and Provision of Medical Accompaniment

- .471 If other information available to the CWD, including, but not limited to, previous or current IHSS case files, does not rebut the presumption of need for medical accompaniment, the person claiming to have needed medical accompaniment is presumed to have needed medical accompaniment for the months claimed during the applicable retroactive payment and/or underpayment period if:
- (a) A need for medical accompaniment was assessed at any time, in which case the need shall be from that time forward; or,
 - (b) The need for medical accompaniment is attested to by a sworn statement on the Standard Claim Form from the claimant and verified by a sworn statement of a witness. The CWD shall consider any other documentation submitted by the claimant to support the presumption of need for medical accompaniment.
- .472 The person claiming to have needed medical accompaniment is presumed to have received medical accompaniment services for the months claimed during the applicable retroactive payment and underpayment periods if the delivery of such services is attested to by a sworn statement from the claimant and verified by a sworn statement of a witness, contained on the Standard Claim Form, and other information available to the CWD, including, but not limited to, previous or current IHSS case files, does not rebut the presumption of delivery of medical accompaniment services.

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- (a) The CWD shall presume that any medical accompaniment services provided and claimed were not provided voluntarily.
- .473 If information available to the CWD rebuts the presumption of either the need for or the delivery of medical accompaniment services during any of the months claimed during the applicable retroactive payment and underpayment period, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.
- .474 If the CWD IHSS recordkeeping system shows no record of the claimed recipient ever applying for or being denied IHSS for the period being claimed, the CWD shall issue a Notice of Action requesting the claimant to complete an attached Supplemental Claim Form in accordance with Section 50-061.44. The claimant shall have 45 days from the date of the Notice of Action to submit the completed Supplemental Claim Form.
 - (a) If the claimant does not submit the Supplemental Claim Form within the 45-day period, the claim shall be denied.
 - (b) If the claimant submits the Supplemental Claim Form, and it is complete based on criteria contained in Section 50-061.443, the CWD shall continue processing the claim.
 - (c) If the submitted Supplemental Claim Form is incomplete based on criteria contained in Section 50-061.443, the CWD shall follow instructions in Section 50-061.444.
 - (d) If the CWD determines that information supplied by the claimant verifies that the claimed recipient did in fact apply for and was denied IHSS during the retroactive payment period being claimed, the CWD shall continue processing the claim to determine eligibility for payments.
 - (e) If the CWD determines that the information supplied by the claimant does not verify the claimed recipient applied for and was denied IHSS during the retroactive payment period being claimed, the CWD shall issue a denial Notice of Action stating the specific reason(s) for the denial.
- .48 Eligibility for Underpayments
 - .481 WRO claims shall be eligible for underpayment consideration only if their eligibility for WRO retroactive payments extended through the end of the retroactive payment claim period, September 30, 1984.

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- (a) Claimants shall have their WRO claim for underpayments denied if their eligibility for retroactive payments does not extend through the end of the WRO retroactive payment claim period, September 30, 1984. Their WRO claim for underpayments shall be denied with a Notice of Action stating the reason for the denial.

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- (b) Eligibility for underpayments in WRO results from IHSS cases or WRO cases carried through the effective date of the corrected spouse provider regulations, MPP 30-763.214(f), September 1984. Potentially eligible cases are those that were not corrected as of the effective date of the revised regulations. Claims for underpayments in which there was not an active case requiring updating to reflect the housemate regulations shall be denied, with the exception of approved WRO claimants whose eligibility extends through the end of the retroactive claim period.

HANDBOOK ENDS HERE

.5 Use of County Worksheets to Document Findings and Calculate Payments Due.

- .51 The CWD shall use the WRO v. McMahon Retroactive Payment Eligibility Determination Worksheet to document all determinations made on each claim submitted. Information from the Standard Claim Form, and the Supplemental Claim Form and case record, where available, shall be used to complete the worksheet.
- .511 The CWD shall record the claimed provider's and recipient's names, social security numbers, and case number, at the top of Part I of the worksheet.
- .512 The CWD shall determine the claimed recipient's eligibility for class membership by reviewing the claimant's response on Part I, Section 2, of the Standard Claim Form, and shall document these findings on step #1 of the worksheet.
- (a) If the claimant answered "yes" to questions 2A, and 2B, and 2E, and 2F, and either 2C or 2D of the Standard Claim Form, the CWD shall proceed to step #2 of the worksheet.
- (b) If the claimant answered "no" to questions 2A, or 2B, or 2E, or 2F, or both 2C and 2D, the CWD shall issue a denial Notice of Action explaining that the claimed recipient is not a WRO class member.

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- .513 The CWD shall determine if the claimed recipient applied for or was denied IHSS during the retroactive claim period by reviewing the claimant's response on Part I, Section 2, question 2G, of the Standard Claim Form, and shall document this finding on step #2 of the worksheet.
- (a) If the claimant answered "yes" to either part of question 2G of the Standard Claim Form, the CWD shall proceed to step #3 of the worksheet.
 - (b) If the claimant answered "no" to both parts of question 2G of the Standard Claim Form, the CWD shall issue a denial Notice of Action.
 - (c) If the claimant answered "unknown" to either part of question 2G, the CWD shall attempt to locate the case record, or record of denial. If neither can be located, the CWD shall send a Supplemental Claim Form to the claimant.
- .514 The CWD shall determine if there is any record of an IHSS approval or denial and shall document this finding on step #3 of the worksheet.
- (a) If there is a record of approval or denial the CWD shall:
 - (1) proceed to step #4 of the worksheet if there is a record of approval for IHSS.
 - (2) proceed to step #8 of the worksheet if there is a record of denial for IHSS.
 - (b) If there is no IHSS case record, the CWD shall send the claimant a Supplemental Claim Form.
- .52 In determining eligibility for those claims in which the CWD has verified by case record that the claimed recipient of protective supervision and/or medical accompaniment services was authorized IHSS during the month(s) claimed, the CWD shall do the following, using the Retroactive Payment Eligibility Determination Worksheet, Part I, steps #4 through #7:
- .521 Determine whether the case record indicates that protective supervision and/or medical accompaniment services were denied during the month(s) claimed for a reason other than because a spouse was providing the service, and check the appropriate response on step #4 of the worksheet.

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- (a) If, for any month(s) claimed, the case record indicates that the denial was based on a reason other than the provision of protective supervision and/or medical accompaniment by the spouse, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the information which indicates the reason for denial of protective supervision. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available. The CWD shall process the claim for any remaining month(s) of eligibility, pending receipt of a response from the claimant.

- .522 Determine whether any information exists outside the case record which indicates that protective supervision and/or medical accompaniment services were denied during the month(s) claimed for any reason other than those services were provided by the spouse, and check the appropriate response on step #5 of the worksheet. Information outside the case record may consist of, but not be limited to, the CWD's knowledge of the IHSS recipient's placement in a state hospital or other type of out-of-home care during the month(s) claimed.
 - (a) If, for any month(s) claimed, information exists outside the case record, as described in Section 50-061.522, the CWD shall document the reason on the provided space on the worksheet, issue a Notice of Action for Adverse Information, and attach a copy of the information which indicates the reason for denial of protective supervision and/or medical accompaniment. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available. The CWD shall process the claim for any remaining month(s) of eligibility, pending the receipt of a response from the claimant.

- .523 Determine from the case record whether the IHSS recipient was receiving the statutory maximum payment, as described in Section 50-061.58, during any eligible month(s) claimed. Check the appropriate response on step #6 of the worksheet.
 - (a) For any eligible month(s) claimed in which the IHSS recipient was receiving the statutory maximum payment, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the relevant information from the case record. The claimant shall have 45 days from the date of the Notice of Action to provide additional information regarding their level of authorized hours, if available.
 - (b) The CWD shall proceed to Section 50-061.54 and determine if there are any remaining month(s) in which the case was not authorized the statutory maximum.

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.524 Determine from the case record whether the claimed IHSS recipient was severely impaired (SI) or nonseverely impaired (NSI), and check the appropriate response on step #7 of the worksheet.

.53 In determining eligibility for those claims in which the claimed recipient of protective supervision and/or medical accompaniment was denied IHSS during the month(s) claimed, the CWD shall complete step #8 of the Retroactive Payment Eligibility Determination Worksheet, locate the record of denial, and follow the procedures in Sections 50-061.521 and .522. The CWD shall proceed to Section 50-061.55 for instructions to complete the calculation of net payments on WRO claims in which an IHSS case had been denied and the WRO claimant is determined eligible for payments.

.531 If the CWD is unable to determine from the record the reason for denial of IHSS during either the entire or partial period claimed, the CWD shall issue a Notice of Action and a Supplemental Claim Form to the claimant to establish whether the claimed recipient of protective supervision and/or medical accompaniment would have met the income/resource eligibility requirements for IHSS. The claimant shall have 45 days from the date of the Notice of Action to complete the Supplemental Claim Form and return it to the CWD, or the claim shall be denied.

.532 Upon the CWD's receipt of the completed Supplemental Claim Form, for denied IHSS cases, the CWD shall check the appropriate responses on Part I, steps #9 through #11, of the worksheet. The CWD shall proceed to Section 50-061.55 if:

- (a) The claimant's responses on Part III, Sections 2 and 3, of the form indicate that the IHSS income/resource eligibility requirements would have been met during the period claimed.
- (b) If the claimant's response on Part III, Sections 2 and 3, of the Form indicate that the IHSS income/resource eligibility requirements would not have been met during the period claimed, the CWD shall deny the claim for those period(s) of ineligibility, document the reason for denial, and then proceed to Section 50-061.55 for any remaining period(s) of eligibility.
- (c) If the claimant's responses on Part III, Sections 2 and 3, of the Form indicate that the IHSS income/resource eligibility requirements would have been met during the period claimed, but the CWD obtains information which contradicts that supplied by the claimant, the CWD shall issue a Notice of Action for Adverse Information and attach a copy of the contradictory information. The claimant shall have 45 days from the date of the Notice of Action to provide additional information if available.

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- .533 If the claimant fails to return the completed Supplemental Claim Form to the CWD within 45 days from the date of the Notice of Action, the CWD shall deny those months in which the IHSS eligibility could not be established. If there are any remaining months of potential eligibility, the CWD shall determine eligibility and shall proceed, as applicable, to Section 50-061.55.
- .54 Calculating the Actual Retroactive Payments and Underpayments - IHSS Case Record For Period Being Claimed
- .541 Parts II, III, and IV of the Standard Claim Form and information from the case record, if available, shall be utilized to calculate retroactive payments and underpayments due on the Retroactive Payment Eligibility Determination Worksheet and the Underpayment Eligibility Determination Worksheet. The CWD shall use the appropriate worksheet to calculate retroactive payments and underpayments if the claimant is found eligible.
- .542 Part II, Section A of the appropriate worksheet shall be utilized to record hours of protective supervision and/or medical accompaniment hours claimed, adjusted medical accompaniment hours as determined by the CWD, and total adjusted hours claimed.
- (a) Total protective supervision hours, if claimed, shall be entered in the first column of Part II, Section A, of the appropriate worksheet, for each month claimed.
 - (b) Medical accompaniment hours claimed, if the claimant is determined eligible to be paid for medical accompaniment upon review of Part IV of the Standard Claim Form by the CWD, shall be entered in the second column of Part II, Section A, of the appropriate worksheet, for each month claimed.
 - (c) Medical accompaniment hours claimed shall be adjusted by the CWD when the monthly amount of medical accompaniment hours claimed are more than eight hours per month, and are not supported by information submitted on Part IV of the Standard Claim Form or other information submitted by the claimant.
 - (d) The CWD shall review all information submitted by the claimant in response to the Notice of Action for Adverse Information regarding claims for medical accompaniment hours which exceed eight hours per month. The CWD may use the medical accompaniment regulations contained in MPP Section 30-757.15, to determine the correct assessment for this service if the claimant is determined eligible for retroactive payments for this service. The CWD shall enter the adjusted figure for medical accompaniment hours claimed in the third column of Part II, Section A, of the appropriate worksheet.

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- (e) The CWD shall enter total medical accompaniment hours, after adjustment if applicable, for each month claimed, in the fourth column of Part II, Section A, of the appropriate worksheet.
- .543 For each claim in which IHSS eligibility during the applicable retroactive payment and/or underpayment periods has been established by the findings in the case record, the CWD shall use Part II, Section B, of the appropriate worksheet to calculate and document the payments due for each month as follows:
- (a) A determination of whether the claimant is "class eligible," as provided on Part I, step #2, shall be entered for each eligible month in Column 2.
- (b) The number of hours claimed as entered in the first and fourth columns of Part II, Section A, shall be entered in the appropriate space in Column 3.
- (c) The dollar amount claimed, which shall be determined by multiplying the number of hours claimed by the CWD's lowest individual provider hourly wage rate during the period claimed, shall be calculated by CMIPS in Column 4.
- (d) The amount of payment the IHSS recipient was originally authorized during the applicable retroactive payment and/or underpayment period shall be entered by the CWD, from the case record, in Column 5.
- (e) The applicable statutory maximum as specified in Section 50- 061.58 shall be entered by CMIPS in Column 6.
- (1) If the case record indicates that the IHSS recipient was severely impaired, CMIPS shall calculate payments using the applicable severely impaired maximums. If the case record indicates that the IHSS recipient was nonseverely impaired, CMIPS shall calculate payments using the applicable nonseverely impaired maximums. The CWD shall enter the appropriate impairment level in Column 7.
- (f) The applicable statutory maximum, as specified in Section 50-061.58 minus the amount originally authorized, as entered in Column 5, shall be calculated by CMIPS in Column 8.
- (g) Total retroactive payments and/or underpayments due shall be calculated by CMIPS in Column 9.

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- (1) For those claims in which it has been established from the case record that the person who is claimed to have received protective supervision services was an IHSS recipient, the total retroactive payments and/or underpayments due shall be the lesser of the following:
 - (A) The difference between the applicable statutory maximum, as specified in Section 50-061.58 and the amount originally authorized, as entered in Column 5, or
 - (B) The amount claimed, as entered in Column 4.
 - (2) Claimants entitled to retroactive payments shall also be entitled to prejudgment interest.
 - (A) CMIPS shall calculate the amount of prejudgment interest due based on the amount of retroactive payments present in Column 9.
 - (3) Underpayments due shall not be subject to prejudgment interest.
- .544 After completion of calculations for retroactive payments and/or underpayments, the CWD claim processor and his/her immediate supervisor shall sign and date the appropriate worksheet at the space provided.
- .55 Calculating the Actual Retroactive Payments and/or Underpayments -Denied and No Record Cases
- .551 Parts II, III, and IV of the Standard Claim Form, and the case record and the Supplemental Claim Form, if used, shall be utilized to calculate retroactive payments and underpayments due on the Retroactive Payment Eligibility Determination Worksheet and the Underpayment Eligibility Determination Worksheet. The CWD shall use the appropriate worksheet to calculate retroactive payments and underpayments if the claimant is found eligible.
- .552 Part II, Section A, of the appropriate worksheet shall be utilized to record hours of protective supervision and/or medical accompaniment hours claimed, adjusted medical accompaniment hours as determined by the CWD, and total adjusted hours claimed, as described in Section 50-061.542(a) through (e).

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- .553 For each claim in which the CWD has either located a record of IHSS denial or the CWD has been unable to locate a case record and eligibility for IHSS has been established by the responses on the Supplemental Claim Form, the CWD shall use Part II, Section B, of the appropriate worksheet to calculate and document the payments due for each month as follows:
- (a) A determination of whether the claimant is "class eligible," as indicated on Part I, step #2, shall be entered for each eligible month in Column 2.
 - (b) The number of hours claimed as entered in the first and fourth columns of Part II, Section A, shall be entered in the appropriate space in Column 3.
 - (c) The dollar amount claimed, which shall be determined by multiplying the number of hours claimed by the CWD's lowest individual provider hourly wage rate during the period claimed, shall be calculated by CMIPS in Column 4.
 - (d) The applicable nonseverely impaired statutory maximum, as specified in Section 50-061.58 shall be calculated by CMIPS in Column 6.
 - (1) The CWD shall use the applicable nonseverely impaired statutory maximum to calculate payments for all eligible cases in which: the CWD has no record of denial or the case record could not be located; eligibility has been established through the Supplemental Claim Form; and available evidence does not clearly show recipient need at the severely-impaired level. The CWD shall enter the appropriate impairment level in Column 7.
 - (e) The total retroactive payment and/or underpayments due, which shall be the amount claimed, as specified in Section 50-061.543(c) and entered in Column 4, provided the amount claimed for any month does not exceed the applicable nonseverely impaired statutory maximum during the month claimed, shall be calculated by CMIPS in Column 9.
 - (1) The total payments due shall be limited to the applicable nonseverely impaired statutory maximum amount during the month claimed.
 - (2) Claimants entitled to retroactive payments shall also be entitled to prejudgment interest.
 - (3) Underpayments due shall not be subject to prejudgment interest.

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.554 After completion of calculations for retroactive payments and/or underpayments, the CWD claim processor and his/her immediate supervisor shall sign and date the appropriate worksheet at the space provided.

.56 The CWD shall use the WRO v. McMahon Underpayment Eligibility Determination Worksheet to document all determinations for underpayment claims which were determined eligible for retroactive payments. Information from the Standard Claim Form, Retroactive Payment Eligibility Determination Worksheet, and Supplemental Claim Form and case record, where available, shall be used to complete the worksheet.

.561 The CWD shall record the claimed provider's and recipient's names, social security numbers, and case number, at the top of Part I.

.562 The CWD shall determine the claimant's eligibility for retroactive payments by reviewing the Retroactive Payment Eligibility Determination Worksheet, and shall document these findings on Part I, step #1 and #2, of the worksheet.

(a) If the claimant is not eligible for retroactive payments under WRO, the CWD shall deny the claim for underpayments.

(b) If the claimant is eligible for retroactive payments under WRO, the CWD shall determine if the claimant is eligible for retroactive payments through the end of the retroactive period, September 30, 1984.

(1) If the claimant is not eligible for retroactive payments through the end of the retroactive period, September 30, 1984, the CWD shall deny the claim for underpayments.

(2) If the claimant is eligible for retroactive payments through the end of the retroactive payment period of September 30, 1984, the CWD shall proceed to step #3 of the worksheet.

.563 The CWD shall determine if there is an IHSS case record for the claim.

(a) If there is no case record, CMIPS shall calculate underpayments using nonseverely impaired maximums.

(b) If there is a case record, CMIPS shall calculate underpayments at the appropriate maximums, subtracting payment amounts for previously authorized IHSS services.

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.57 Calculating the Actual Underpayments - Claims With and Without IHSS Case Records

.571 The CWD shall use Section 50-061.54 for the calculation of underpayments for claims with an IHSS case record, and are otherwise eligible to receive underpayments.

.572 The CWD shall use Section 50-061.55 to calculate underpayments for claims with no IHSS case record, and are otherwise eligible to receive underpayments.

.58 IHSS Statutory Maximum During Retroactive Payment and Underpayment shall be:

Effective Date	NSI	SI
7/1/83 --- 6/30/84	\$604	\$872
7/1/84 --- 6/30/85	\$638	\$921
7/1/85 --- 8/31/86	\$674	\$974

.6 General Provisions

.61 Share of Cost

.611 The CWD shall not consider any recipient share of cost when computing the amount of retroactive payments and/or underpayments due.

.62 Prejudgment Interest

.621 Prejudgment interest for retroactive payments only shall be calculated at the following rate:

(a) Ten percent for the period July 1, 1983 through September 30, 1985.

.622 The interest shall be computed on the amount of the monthly payment up through the last day of the month following the month in which payment is authorized.

.63 Notices of Action

.631 For each claim received for retroactive payments and underpayments, the CWD shall issue a final Notice of Action. The Notice of Action shall contain the following information:

(a) The month(s) determined eligible and/or ineligible for retroactive payments and/or underpayments. The reason(s) for any months determined ineligible shall be clearly stated;

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- (b) The amount of retroactive payments due for each month, which shall be shown with and without interest;
 - (c) The amount of retroactive payments and interest due for each year, if payments are claimed for more than one year;
 - (d) The total retroactive payments due and the total amount of interest due;
 - (e) The combined amount of retroactive payments and interest due;
 - (f) The amount of underpayments due for each month, for each year if payments are claimed for more than one year, and the total underpayments due;
 - (g) A statement regarding withholding taxes;
 - (h) A statement regarding the claimant's right to a State Hearing on WRO v. McMahon determinations made by the CWD and information on how to request such hearings;
 - (i) The final Notice of Action approving or denying WRO claims for medical accompaniment shall specify the exact amount of and reason for adjusted hours, if any, for the service of medical accompaniment.
- .632 Each Notice of Action issued due to the claimant's failure to complete either the Standard Claim Form or Supplemental Claim Form in its entirety shall specify those sections of the form in need of completion.
- .633 Each Notice of Action as a result of the CWD having contradictory information shall include a copy of the information and shall advise the claimant that he/she has 45 days from the date of the Notice of Action to provide additional information, if available, or the claim shall be denied.
- (a) If the claimant does not respond within the 45 days and provide information to rebut the CWD's contradictory information, the CWD shall issue a Final Notice of Action denying the claim for the months of ineligibility.
- .634 For each claim denied, the Notice of Action shall clearly state the reason(s) for each period claimed and denied.

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- .635 For each approved claim in which the claimant is currently an IHSS recipient, the Notice of Action shall advise the claimant that the payment received as a result of his/her WRO v. McMahon claim may adversely affect his/her IHSS, SSI eligibility or other aid program eligibility and tax liability.
- .64 State Hearings
- .641 The right to a state hearing on any WRO v. McMahon claim shall be granted only to WRO v. McMahon claimants or their authorized representatives.
- .65 Treatment of Lump Sum Payments in the IHSS Program
- .651 It shall be the responsibility of the CWD to determine if the lump sum WRO v. McMahon retroactive payments and underpayments affect or does not affect the continued eligibility of all WRO v. McMahon claimants who are currently IHSS recipients.
- .652 WRO v. McMahon payments shall be disregarded for IHSS financial eligibility determinations for the month of receipt and the following month. Any remaining balance from the WRO v. McMahon payments shall be counted as a resource in the second month following the month of receipt.
- .7 Monitoring CWD Compliance
- .71 County Statistical Reports
- .711 Beginning February 1, 1993 and continuing until an eligibility determination has been made on each claim received, the SDSS shall compile a monthly report on retroactive payment claims and a separate monthly report on underpayment claims. The reports shall contain the following information:
- (a) The number of claims received;
 - (b) The number of claims denied;
 - (c) The number of claims approved;
 - (d) The number of claims pending; and,
 - (e) The amount of payments approved.

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.72 Final Report

.721 SDSS shall obtain from the CMIPS a final report, by county, that includes the following:

- (a) The number of claimants paid;
- (b) The total amount of retroactive payments;
- (c) The number of underpayments paid; and,
- (d) The total amount of underpayments paid.

.73 Case Reviews

.731 Based on the quarterly reports, SDSS shall determine the fifteen (15) counties having the largest number of claims over the eight-month period.

.74 County Cooperation

.741 Each CWD shall cooperate with SDSS in providing information deemed necessary to monitor county compliance with the provisions of these regulations and the WRO v. McMahan final judgment.

.8 Appendix - WRO Forms

.81 The following forms are to be used to process WRO claims:

- (1) Poster - 2041 (Eng/Sp) (11/92)
- (2) Explanatory Flyer - 2040 (Eng/Sp) (11/92)
- (3) Standard Claim Form - 2007 (Eng/Sp) (11/92)
- (4) Supplemental Claim Form - 2006 (Eng/Sp) (11/92)
- (5) Underpayment Worksheet - 2008 (11/92)
- (6) Retroactive Worksheet - 2009 (11/92)

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Amended Judgment regarding WRO v. McMahan dated July 19, 1991, Case No. 531015; 20 CFR 416.1806; and Sections 12300, 12303.5, 12304, and 12304.5, Welfare and Institutions Code.